

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK NC 27711

MEMORANDUM

SUBJECT: Operating Permits Program Review Process

FROM: Lydia N. Wegman, Deputy Director
Office of Air Quality Planning and Standards (MD-10)

TO: Addressees

Attached is the final Operating Permits Program review process, which consists of a timeline and a supporting narrative. This process was developed by the Operating Permits Program Review Work Group, which included Region I, Region IV, Region IX, the Office of Air Quality Planning and Standards, the Office of General Counsel, the Office of Enforcement's Air Enforcement Division, and the Office of Atmospheric Programs. Based on our discussion at our last Division Directors' meeting, we agreed that this process would be followed by the Regions and Headquarters Offices when reviewing State operating permits program submittals. In light of this agreement, all Regional and Headquarters Offices should be following the process when the program reviews begin.

As you know, the statutory deadline for submitting the operating permits programs to EPA is November 15, 1993. The Agency has 1 year to propose and take final action on operating permits program submittals. It is important to strive to meet that timeframe in order to process the State programs expeditiously and to avoid possible litigation. Consequently, adherence to the process by everyone involved in the review is necessary to ensure prompt EPA action on the operating permits program submittals. As noted in the attachment, a key to the success of this process is the consistent and active participation of both Regions and Headquarters Offices in the Operating Permits Task Force prior to State permits program submittals.

I would like to take this opportunity to thank Region IV for their help in this process. Last summer, they developed a draft "white paper" which included a review process and an assessment of the issues affecting the operating permits program. In addition, Region IV developed the first draft of the timeline for the process. Their efforts served as a catalyst for this process and added significantly in moving the process along.

If you have any questions on this process, please contact
Jerry Stubberfield at (919) 541-0876.

Attachment

Addressees:

Director, Air, Pesticides and Toxics
Management Division, Regions I and IV

Director, Air and Waste Management Division,
Region II

Director, Air, Radiation and Toxics Division,
Region III

Director, Air and Radiation Division
Region V

Director, Air, Pesticides and Toxics Division,
Region VI

Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

Alan Eckert, OGC
Kathie Stein, OE
Paul Stolpman, OAP

Regional Office (RO)

- Upon receipt send copy to HQ w/memo identifying issues
- Conduct completeness review (60 days)
- Begin substantive review process

Region completes Federal Register (FR) package including Technical Support Document and forwards to HQ by Day 120

RO makes changes and publishes FR by Day 180 *

30-day public comment period (can be extended 15 days)

If no comments publish FR notice

If comments RO prepares response to comments & sends to HQ for review by Day 240

RO submits final signed FR notice

RO makes changes & publishes FR notice by Day 365 *

Headquarters (HQ)

- HQ conducts review
- HQ submits substantive comments to Regions in writing by Day 90 including early warning of non-concurrence issues

Resolution of major issues completed prior to Day 120
If necessary, nonconcurrence memo due to RO by Day 120

Begin issue/resolution process for nonconcurring issues

HQ completes review of FR package by Day 150

HQ confers with RO in review and resolution of public comments. Memo to RO by Day 255
If problems

Begin issue/resolution process for nonconcurring issues

HQ completes review of final FR notice by Day 315

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April 14, 1993

Issue/Resolution Process

Regional Office

Day

Headquarters

RO Div Director calls nonconcurring HQ Div. Dir. to resolve issue

If resolved, Regional Administrator (RA) signs FR notice

If unresolved, RO raises issues to the RA

HQ office prepares nonconcurrence memo

If unresolved, HQ raises issues to AA/General Counsel (GC)

AA for OAR, AA for OE and/or GC call RA

Final resolution by Administrator. RA signs FR notice

* (Note: If FR notice is a disapproval, it is sent to OMB for 30-day review. All subsequent dates adjust accordingly)

() - Indicates resolution of public comments

Operating Permits Program Review Process

Pre-Submittal of State Operating Permits Program

The following process is based on the assumption that the Regional Offices (RO) and Headquarters (HQ) will have been involved in a continuous dialogue through the Operating Permits Task Force. The Task Force is the forum which will be used to identify and resolve issues before the program is submitted by the State. Only with full participation in and coordination through the Task Force will the process described below be successful.

The process also assumes that the Regions have had a fairly constant involvement with their respective State/local agencies as the State/local operating permits programs are being developed. It also assumes that the Office of General Counsel (OGC) has had the opportunity to review the State/local enabling legislation and provided comment prior to submission. At the time of program submittal the Region should have a good sense of what issues or concerns, if any, remain.

Day 1-90

Upon receipt of a State operating permits program, the RO prepares a transmittal memorandum and forwards the submittal to HQ¹. This memorandum should outline any issues that the Regions have identified after discussions with the State (and/or those brought up by the Operating Permits Task Force). The RO then conducts a completeness review within 60 days of receipt. After determining that a submittal is complete, the RO begins their technical/approvability review. The RO's should keep HQ informed of the status of their substantive review including the Federal Register (FR) notice and the technical support document (TSD) development. This shall be accomplished through the Task Force and/or through the monthly title V conference calls.

After receiving the submittal from the RO, HQ begins their review of the State program (around Day 7). The goal of this process is to ensure a continuous dialogue between HQ and the RO on the review of the State submittal. A conference call between the RO and HQ reviewers should occur within the first 60 days in order to discuss any issues or the direction technical/legal review is taking. This call is to be initiated by HQ. (The

¹ The submittal is envisioned to be transmitted electronically to Headquarters. The Headquarters reviewing offices shall include AQMD, ESD, SSCD, OGC, OE, OPPE, OSWER and OAP.

Regional Operations Branch of the Air Quality Management Division will be responsible for establishing this call). If HQ identifies any potential nonconcurring issues that cannot be resolved, the Division Director of that HQ office is responsible for putting their comments in writing and sending them to the RO by Day 90.

Day 90-120

In those circumstances where all HQ reviewing offices' concerns have been addressed, the RO completes the FR notice and the TSD, and forwards the FR package to HQ on Day 120 for a 30-day review.

However, when a potential nonconcurring issue has been identified, the RO Branch Chief has the responsibility to contact the appropriate HQ Branch Chief early in this timeframe. The goal of the call is to achieve resolution of the issue in order to avoid HQ nonconcurrence. (Note: The expectation is that earlier interaction by HQ/RO management will minimize the need for this step, i.e., resolution would occur by Day 90.) If agreement cannot be reached between the Branch Chiefs, however, HQ is responsible for preparing a nonconcurrence memorandum by Day 120, signed by the Office Director within the Office of Air and Radiation (OAR) or equivalent level of management in other offices.

Day 120-150

When a nonconcurrence memorandum has been received, the RO Division Director places a telephone call by Day 125 to the HQ nonconcurring Division Director to see if the issue can be resolved. If resolution does not occur, HQ [OAR/Office of Enforcement (OE)/OGC] raises the issue to their respective Assistant Administrator (AA)/General Counsel (GC) and the RO raises issue to the Regional Administrator (RA) by Day 130. The Office of Air Quality Planning and Standards is responsible for briefing the AA for OAR on all HQ nonconcurrences. A call between the AA for OAR, the AA for OE and/or GC, and the RA takes place (with appropriate staff as necessary) to discuss and attempt resolution of the issue. If the nonconcurring issue is resolved at the AA/RA level, the RA signs the FR notice. If the HQ nonconcurring issue is not resolved at the AA/RA level, the issue is raised to the Administrator for resolution, hopefully by Day 150. Following resolution by the Administrator, the RA signs the FR notice. (Note: The goal is to avoid raising nonconcurrences to the Administrator. Early management involvement will help ensure that this does not happen.)

Day 150-180

Headquarters completes their review of the FR package (notice and TSD) by Day 150. The RO makes any necessary language changes to the package, clears the changes with HQ, and sends the proposed rule to the EPA Federal Register Office (FRO) for publication. (The RA signs proposed rules.)

If EPA is proposing to disapprove the submittal, the FR notice is sent to OMB for a 30-day review. When this occurs, all subsequent timeframes slide accordingly.

Day 180-210

The Agency's proposed action regarding the operating permits program is published by Day 180, and the public comment period is generally open for 30 days. A one-time extension of the public comment period of 15 days can be granted if requested by a commenter.

Day 210-255

If no public comments are submitted on the proposal, the RO prepares a final rulemaking notice. (HQ does not review final actions when no comments have been submitted on the proposal.) After signature by the RA, the RO sends final rule to the EPA FRO for publication.

When comments are submitted, the RO will prepare responses to the comments and submit them to HQ for review by Day 240. The RO is encouraged to share the comments and their anticipated response before Day 240. (Note: Since HQ will only be reviewing responses to comments at the final rulemaking stage, the review and issue/resolution timeframes will be on an accelerated schedule.) If a potential nonconcurring issue is identified, HQ has until Day 255 to submit a memorandum from the HQ Division Director to the RO outlining their concerns.

Day 255-285

As at the proposal stage, the RO Branch Chief contacts the appropriate HQ Branch Chief to attempt to resolve the issue. If that does not occur, a nonconcurrency memorandum from the Office Director needs to be prepared by Day 265. A call then occurs at the Division Director's level to resolve the issue by Day 270. If resolution is not reached, then HQ/RO raise the issue to their

²Note: OAQPS still needs to determine if all notices must go to OMB.

respective AA/GC or RA for issue/resolution by Day 275. If the issues are resolved, the RA signs the final FR notice. If the HQ nonconcurrency stands, the issue is raised by Day 285 to the Administrator for resolution.

If for any reason the final action results in a change to disapproval, then it must be submitted to OMB for review (and may have to be repropose).

Day 285-365

The RO finalizes and signs the FR notice incorporating appropriate language changes (working with HQ as necessary) and forwards to HQ for review by Day 300. The HQ review is completed by Day 315. The RO sends a FR notice to the EPA FRO for publication of final rule. (Goal is to promulgate within 1 year of submittal.)